

**MODIFICATION #10
TO
CONTRACT NUMBER C600005
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
ENTERPRISE LEASING COMPANY
AND
ENTERPRISE LEASING COMPANY OF NORFOLK/RICHMOND**

This MODIFICATION #10 is an agreement between the Commonwealth of Virginia, Department of General Services/Office of Fleet Management Services, hereinafter referred to as "Purchasing Agency" and Enterprise Leasing Company, a Maryland corporation, and Enterprise Leasing Company of Norfolk/Richmond, a Virginia corporation, both of which are hereinafter referred to as "Contractor," relating to the modification of Contract C600005 dated April 24, 2006, as amended, hereinafter referred to as the "Contract" or "Agreement." This Modification #10 is hereby incorporated into and made an integral part of the Agreement.

WHEREAS, the Contractor's standard business practice is to require drivers to execute a form rental contract when receiving a rental car; and

WHEREAS, the parties agree that in the event of a direct conflict between the terms of this Agreement and the terms of any Rental Contract, the terms of this agreement will govern. However, the specific terms of each Rental Contract will govern to the extent not directly in conflict with the terms of this Agreement.

WHEREAS, the parties wish to clarify certain terms of the Contract, including the insurance coverage obligations of the Contractor; and

WHEREAS, the parties agree to renew the Contract with a price increase,

NOW THEREFORE, the parties hereby agree to the following changes, which shall be effective as of June 23, 2009:

- A. Reference: General Term and Condition "O" entitled "Changes to the Contract". Pursuant to General Term and Condition "O" of the Contract, which allows changes to be made to the contract by mutual agreement of the parties, the parties hereby agree to the following:
 - 1. Revise General Term and Condition "O" to remove the following statement:
"Any modifications shall be sent in writing via United States Postal Service

with Return Receipt Requested. If within 30 days of receipt of written modifications, no additional written communication has occurred, Enterprise Rent-A-Car shall deem it to be an acceptance of the terms of modification."

2. Add Special Terms and Conditions to read as follow:

N. **EXCLUSIVITY OF TERMS AND CONDITIONS:** No employee or agent of the Commonwealth shall be required to sign or execute any additional contract, license or other agreement containing contractual terms and conditions; excluding the form rental contract as required for receiving a rental car outlined above. Any documents signed by persons other than the Director, DGS Central Procurement Services Unit (now called the DGS Central Procurement Unit), or their duly authorized designee listed in Contract Modification #7, shall have no validity or effect upon the Contract.

O. **INTERPRETATION OF AGREEMENT:** Headings are for reference purposes only and shall not be considered in construing this Agreement.

The documents comprising this Agreement, and their order of precedence in case of conflict, are: (1) fully executed contract modifications related to this Agreement, (2) the clarifications found in Supplemental 1, (3) the Contractor's bid dated March 13, 2006 submitted in response to the Commonwealth's Invitation for Bid (IFB) #CLC-2006-0130; and (4) the Commonwealth's IFB #CLC-2006-0130, dated January 30, 2006 and amendments thereto. The foregoing documents represent the complete and final agreement of the parties with respect to the subject matter of this Agreement.

If any service delivered under this Agreement is delivered pursuant to an agreement that is different than the Agreement, then the Contractor shall indemnify the agency, its officers, agents, and employees from any and all additional liabilities, expenses, burdens, or other obligations incurred by them as a result of using this service.

As between the Contractor and the Commonwealth, this Agreement identifies all of the terms, conditions and liabilities and obligations applicable between the parties. If any customer number created from this agreement and connected to this contract, contains any provisions purporting to define different or additional terms and conditions to be applicable between the Commonwealth and the Contractor, Contractor hereby waives any such additional terms and conditions.

If any term or condition of this Agreement is found to be illegal or unenforceable, it shall be severed, and the validity of the remaining terms and conditions shall not be affected.

Nothing in this Agreement shall be construed as an express or implied waiver of the Commonwealth's sovereign or Eleventh Amendment immunity, or as a pledge of its full faith and credit.

P. **THIRD PARTY LIABILITY INSURANCE COVERAGE AND INDEMNIFICATION:** The Contractor will maintain in force, at its sole cost, insurance coverage which will indemnify, hold harmless and otherwise protect the Commonwealth of Virginia and its officers, agents and employees, against liability for personal injury, death, and property damage arising from the use of the vehicle.

The Contractor shall furnish to the Department of General Services evidence of insurance in the amount of not less than \$1,000,000 per occurrence for bodily injury and property damage combined. Providing a certificate of insurance issued by an insurer admitted to issue policies in Virginia may satisfy evidence of insurance. The insurer shall have a rating of B+ or better as determined by Best's Key Rating Guide.

The evidence of insurance must include the following provisions in their entirety:

- a. This insurance will not be cancelled, non-renewed, or reduced in limits without thirty (30) days prior written notice to the State; and
- b. The Commonwealth of Virginia and its officers, agents, employees and servants are included as additional insured's, but only insofar as the operations under this contract are concerned.

The Contractor shall be responsible for the timely submission of its insurance certificate and any additional documentation as is needed to establish to the State's satisfaction that Contractor's insurance fully covers the operation of all participating franchisees and subcontractors.

In the event the Contractor fails to keep insurance coverage in effect at all times as herein provided, the State may, in addition to any other remedies it may have, terminate this contract upon the occurrence of such event.

ONLY COMMERCIAL INSURANCE WILL SATISFY THESE PROVISIONS REGARDING AUTOMOBILE LIABILITY. NO SELF INSURANCE WILL BE ACCEPTED.

- Q. **AUTHORIZED DRIVERS:** Employees of the Commonwealth or those individuals contracted by the Commonwealth to perform services may rent and operate vehicles under this Agreement when on official business and while acting within the scope of their employment duties unless designated as non rental eligible as per standard Enterprise Rent-A-Car Do Not Rent procedures as outlined below. A Do Not Rent Listing can be issued for, but is not limited to: failure to pay, unauthorized travel, operation of a rental vehicle while intoxicated or under influence of an illegal substance, or using a rental vehicle for purposes other than designated by contract. The Do Not Rent declaration would occur at the time of rental once put on the Do Not Rent List. Once on the Do Not Rent List it will follow the individual and prohibit renting, whether the Do Not Rent status occurred during business rental travel or personal use travel. Anyone on the Do Not Rent List would be considered an unauthorized driver and would be excluded from renting no matter the circumstance.

PROCEDURES FOR ADDING A CUSTOMER INTO THE DO NOT RENT "Customer Warning" DATABASE:**

1. Contractor will include an individual customer in its "Customer Warning" database after one of the following items listed above; but not limited to, has occurred.
2. The individual customer is referenced by driver's license and as a second identifying piece, phone number given at the time of rental.
3. At the time of rental, an individual customer would not be able to continue in the rental process if the driver's license and phone number match a listing in the Database.
4. The individual customer would be notified that a rental cannot occur at this time.
5. If a remedy is available (examples would be payment of an outstanding rental, etc) at the time of rental, then every effort would be made to provide a remedy immediately. This is not a guarantee of remedy, nor would all situations allow for removal from the Customer Warning Database.

**Procedures outlined above are for general illustrative purposes only and may be updated locally as the standard operating procedure of Enterprise Rent-A-Car. These procedures are established as a guideline and would follow by determination all laws and regulations of the Commonwealth.

Authorized Drivers should take the same care and precautions followed as when driving a Commonwealth fleet vehicle and follow the same policies and procedures as written by the Authorized Agency.

R. **LOSS OF OR DAMAGE TO VEHICLE:** Notwithstanding the provisions of any Contractor vehicle rental agreement executed by an Authorized Driver, the Contractor hereby assumes and shall bear the entire risk of loss of, or damage to, the rented vehicles (including costs of towing, administrative costs, loss of use, and replacement), from any and every cause whatsoever, including without limitation, casualty, collision, fire, upset, malicious mischief, vandalism, falling objects, overhead damage, glass disappearance, except where the loss or damage is caused by one or more of the following:

1. Willful or wanton misconduct on the part of a driver. Willful or wanton misconduct is conduct which is committed with an intentional or reckless disregard for the safety of others or with an intentional disregard of a duty necessary to the safety of another's property.
2. Obtaining the vehicle through fraud or misrepresentation.
3. Operation of the vehicle by a driver who contributed to the vehicle damage while such person was (and has been adjudged by the courts to have been) under the influence of alcohol or other drug(s) as defined in Policy Number 1.05 of the Commonwealth of Virginia's *Department of Human Resource Management Policies and Procedures Manual*.
4. Use of the vehicle for any intentionally illegal purpose.
5. Use or permitting the vehicle to carry unauthorized passengers or property for hire.
6. Operation of the vehicle in a test race or contest.
7. Operation of the vehicle by a person other than an Authorized Driver.
8. Operation of the vehicle outside the continental United States except where such use is specifically authorized by the rental agreement. Operation across international boundaries unless specifically authorized at the time of rental. (Commonwealth of Virginia policy

requires that the appropriate State agency approve the out-of-the-United States travel, that the Contractor is notified regarding the trip and that the Department of Treasury's, Office of Risk and Insurance Management approved insurance is obtained for the trip.)

- S. **DAMAGE LIABILITY:** In the event of an accident, Authorized Drivers will not be responsible for loss or damage to the vehicle except as stated in Special Terms and Conditions Q and R above.
- T. **BILLING FOR DAMAGES:** Whenever a loss or damage occurs as a result of one of the uncovered incidents listed in R above, the Contractor will submit its bills for damages directly to the agency employing the Authorized Driver, and not to the Authorized Driver. If the agency denies liability on the basis that the individual renter was not operating the vehicle within the scope of employment at the time of the loss, the Contractor may bill the individual renter directly. Claims for damage to a vehicle will not include amounts for loss of use.
- U. **ACCIDENTS OR REPAIRS:** The Contractor will notify Authorized Drivers that in the event of an accident or if repairs become necessary, the Authorized Driver should immediately notify the Contractor by calling the toll free telephone number, or other telephone number provided by the Contractor, and request a replacement vehicle if necessary and instructions for the disposition of the disabled vehicle. In accordance with the IFB, Section II, entitled "Scope of Work", Subsection F. Item 3. Accident: when an accident occurs and the fault is not the Commonwealth's, Contractor will handle any and all insurance claims.
- V. **DRIVER PROTECTION PRODUCTS DEFINITIONS:** Driver Protection Products for box trucks and rental cars are listed in Attachment A attached hereto.
- W. **PRICE ADJUSTMENTS:** At its sole discretion, the Commonwealth may permit price adjustments only at the time of Contract renewal, and only where verified to the satisfaction of the Contracting Officer. Contract pricing for any renewal period following the Initial Term shall not exceed the lesser of either: a) a 4% increase of the prior term contract pricing, or b) an increase/decrease by more than the percentage increase/decrease of the United States' (US) Department of Labor's (DOL) Bureau of Labor Statistics' (BLS) "Services" category of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) section of the Consumer Price Index for the latest 12-month period. (<http://stats.bls.gov/news.release/cpi.t04.htm>)

Any requested change in price shall be submitted in writing for consideration by DGS in accordance with the above and shall not become effective sooner than sixty (60) days thereafter.

3. Reference: "Supplemental 1", Section II.B, entitled "Users of the Program":

Remove Item 4, regarding "State Agency/Individual (Airport)," in its entirety.

- U. Pricing: In exchange for Contractor's agreement to the above modifications, DGS agrees to the pricing delineated in Attachment B to this Modification #10, attached hereto and incorporated herein, and entitled "Price Schedule" to be effective June 23, 2009.

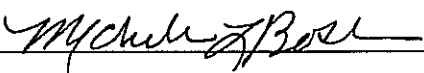
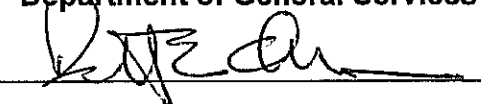
B. Reference: Special Term and Condition K entitled "Renewal of Contract".

The Agreement is renewed for the period June 23, 2009 through April 23, 2010.

The foregoing is the complete and final expression of the parties' agreement to modify Contract C600005 and cannot be modified, except by a writing signed by the duly authorized representatives of both parties.

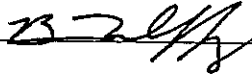
ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

Enterprise Leasing Company, A Maryland Corporation		Commonwealth of Virginia Department of General Services	
BY:	<u></u>	BY:	<u></u>
NAME:	<u>Michelle Bosch</u>	NAME:	<u>Robert E. Gleason, CPPO, VCO</u>
TITLE:	<u>VP/GM</u>	TITLE:	<u>Director, Central Procurement Unit</u>
DATE:	<u>6-2-2009</u>	DATE:	<u>6/4/09</u>

and

Enterprise Leasing Company
Of Norfolk/Richmond,
A Virginia Corporation

BY: 
NAME: BRIAN T. DUFFY
TITLE: Vice President / General Manager
DATE: 6/1/2009

**ATTACHMENT A
TO
MODIFICATION #10
TO
CONTRACT C600005**

Definitions of the Driver Protection Products included in rates listed below are as follows:

DRIVER PROTECTION PRODUCTS: Base Rental Charges in the U.S. include Driver Protection Products below:

COLLISION DAMAGE WAIVER (CDW) FOR BUSINESS RENTALS. For rentals to Customer's employees ("Employees") for business use who are 21 years old or older only, Base Rental Charges include full CDW (with no deductible) upon the terms and subject to the limitations set forth in Enterprise's then standard form of rental contract ("Rental Contract"). Certain exclusions apply for Collision Damage Waiver; please reference the Rental Contract for information regarding these exclusions.

SUPPLEMENTAL LIABILITY PROTECTION (SLP) FOR RENT-A-CAR BUSINESS RENTALS. For rentals to Customer's employees ("Employees") for business use who are 21 years old or older only, Base Rental Charges include SLP providing liability insurance for accidents arising out of the operation or use of the rental vehicle with combined single limits of \$1,000,000.00 for bodily injury or death and property damage per occurrence upon the terms and subject to the limitations set forth in Enterprise's then standard form of rental contract ("Rental Contract") and in the insurance policy which provides the SLP (SLP not available in Alaska). SLP excludes any protection afforded under: first party benefits; personal injury protection; medical payments; no-fault; and uninsured or underinsured motorist. No coverage is provided for physical damage to, or theft of, the rental vehicle. Protection is subject to the provisions of the Rental Contract and the SLP policy issued by Empire Fire and Marine Insurance Company. A Certificate of Insurance naming Customer as an Insured will be issued by Empire Fire and Marine Insurance Company upon request. Occasional personal use during business rental period is allowed. In the case of personal use of the vehicle when rented for business purposes, spouses of current employees of Customer will be considered additional authorized drivers.

SLP FOR RENT-A-TRUCK BUSINESS RENTALS. For truck rentals to Customer's employees ("Employees"), for business use who are 21 years old or older only, Base Rental Charges include SLP providing liability insurance for accidents arising out of the operation or use of the rental vehicle with combined single limits of \$1,000,000.00 for bodily injury or death and property damage per occurrence upon the terms and subject to the limitations set forth in Enterprise's then standard form of rental contract ("Rental

Contract") and in the insurance policy which provides the SLP (SLP not available in Alaska). SLP excludes any protection afforded under: first party benefits; personal injury protection; medical payments; no-fault; and uninsured or underinsured motorist. No coverage is provided for physical damage to, or theft of, the rental vehicle. Protection is subject to the provisions of the Rental Contract and the SLP policy issued by Empire Fire and Marine Insurance Company. A Certificate of Insurance naming Customer as an Insured will be issued by Empire Fire and Marine Insurance Company upon request.

**ATTACHMENT B
TO
MODIFICATION #10
TO
CONTRACT C600005**

Price Schedule
(Effective June 23, 2009)

Vehicle Type	Daily	Weekly	Monthly
Compact	\$32.65	\$179.58	\$718.30
Intermediate	\$35.65	\$196.08	\$784.30
Mid Size	\$36.65	\$201.58	\$806.30
Full Size	\$36.65	\$201.58	\$806.30
Minivan	\$65.65	\$361.08	\$1,444.30
12/15 Passenger Van	\$85.65	\$471.08	\$1,884.30
Cargo Van	\$55.65	\$306.08	\$1,224.30

Vehicle Type	Daily Includes 150 free miles	Weekly Includes 750 free miles	Additional Cost incurred after exceeding free miles
Cutaway truck	\$70.00	\$350.00	\$0.15/mile
15-16 ft box truck	\$80.00	\$400.00	\$0.15/mile
20-24 ft stake bed	\$105.00	\$525.00	\$0.15/mile
24 ft box truck	\$100.00	\$500.00	\$0.15/mile
26 ft box truck	\$105.00	\$525.00	\$0.15/mile

Rates above include collision and liability as defined in Contract Modification #10 and Attachment A of the DGS Contract #C600005.

- Daily is defined as one (1), twenty-four (24) hour period
- Weekly is defined as seven (7), consecutive twenty-four (24) hour periods
- Monthly is defined as thirty (30), consecutive twenty-four (24) hour periods

Contract C600005 provides only for rentals originating in the Commonwealth of Virginia. Rentals originating outside of the Commonwealth of Virginia are to be procured separately.